

LICENSING AND REGULATORY COMMITTEE

30 September 2019

Title: Local Government (Miscellaneous Provisions) Act 1982 as Amended – Sex Establishment Licensing	
Report of the Director of Law and Governance	
Open Report	For comment
Wards Affected: None	Key Decision: No
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Accountable Director: Andy Opie, Operational Director for Enforcement and Community Safety	
Accountable Strategic Leadership Director: Fiona Taylor, Director of Law and Governance	
Summary <p>The Council currently acts as local licensing authority for sex establishments under the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Greater London Council (General Powers) Act 1986. The present local licensing regime covers sex shops, sex cinemas and sex encounter establishments.</p> <p>Adoptive provisions established under Section 27 of the Policing and Crime Act 2009 extended the potential scope of the Act to also include sex entertainment venues. To date, these provisions have not been adopted locally.</p> <p>While enquiries to the Authority concerning the licensing of such venues have been few in recent years it is considered prudent, in the light of the ongoing regeneration of the borough, to now adopt these provisions. This will help to ensure that any future proposal to establish a sex entertainment venue within the borough may receive full and proper consideration and, in the event of any licence being granted, to enable such premises to be properly regulated.</p> <p>Any decision to adopt the amended provisions is required by law to be subject of public consultation. Public consultation on both the adoption of the amended provisions and, also, on the content of a draft revised, supportive sex establishments licensing policy has been carried out over the summer months.</p> <p>The consultation responses have now been collated and considered. This report provides an update to the Committee on the consultation responses and draft policy, as requested at the meeting held on 17 July 2019 (Minute 4 refers).</p> <p>Full copies of the report on the consultation responses; the draft revised sex establishments licensing policy and associated standard licensing terms, conditions and restrictions, are attached for information.</p>	

Recommendation(s)

That the Licensing and Regulatory Committee

- (i) Note the consultation responses; and
- (ii) Provide observations on the revised draft policy document and associated standard licence terms, conditions and restrictions.

Reason(s)

The adoption of the amended licensing provisions and the revised licensing policy are recommended to best place the Council to give proper consideration to any future proposal to establish a sex entertainment venue within the borough and to properly regulate any venue that might be granted a licence.

Such a step would support the Council's visions and priorities in empowering people; and promoting both inclusive growth and citizenship and participation.

1. Introduction and background

- 1.1 Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 established a national regime for the licensing of sex establishments, under adoptive provisions covering:
 - Sex shops; and
 - Sex cinemas.
- 1.2 This Authority adopted the provisions of the Act on 27 October 1982.
- 1.3 The scope of the Act was broadened in those areas of Greater London where the Act applied, through adoptive provisions contained in the Greater London Council (General Powers) Act 1986. This added an additional category of 'sex encounter establishments.
- 1.4 In 2008, this Council adopted a Sex Establishments Licensing Policy together with standard conditions applicable to all categories of licensed sex establishment. The policy is intended to set out the Council's approach to licensing; how licence applications will be determined; the Council's expectations of any licensed operator; and make clear the terms, conditions and restrictions under which any licensed premises may operate.
- 1.5 Section 27 of the Policing and Crime Act 2009 then sought to further extend the scope of the Act. Its primary effect was to remove 'loopholes' in the licensing of sex establishments that existed by way of the alcohol and entertainment licensing regime established under the Licensing Act 2003 by replacing the category of 'sex encounter establishments' under Schedule 3 with a new category of 'sex entertainment venues'. Local licensing authorities that adopt these provisions are able to additionally regulate lap dancing and similar venues. Note: 'Sexual entertainment venue' means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. 'Relevant entertainment' is defined as any live performance or live

display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably be assumed to be provided solely or principally for purpose of sexually stimulating any member of the audience whether by verbal or other means.

- 1.6 This Authority has not adopted the provisions of Section 27 to date. Enquiries to this Authority around sex establishments in recent years have been few. However, it is considered prudent, in the light of the ongoing regeneration of the borough, to now adopt these provisions so as to ensure that the Council is able to make use of all the regulatory powers available to it and be able to afford proper protections to local residents; responsible business operators; and premises users.
- 1.7 In order to pursue the adoption of the Section 27 provisions, the Council is required by law to firstly conduct public consultation on the matter. A public consultation exercise was carried out through the Summer of 2019 accordingly.
- 1.8 The consultation considered not only the adoption of the amended provisions but also the adoption of a supporting revised sex establishments licensing policy that considered the broadened remit of the licensing regime.
- 1.9 The consultation responses have been collated and considered. A summary of the consultation responses has been prepared and a copy is provided at Appendix A to this report. Some 'headlines' are provided in this report.
- 1.10 A copy of the revised draft policy document is provided at Appendix B. Appendix C provides the associated revised standard licence terms, conditions and restrictions.

2. Proposals and Options

The response to the public consultation

- 2.1 The public consultation took place over 10 weeks between 17 June and 24 August 2019. At the heart of the consultation an online questionnaire providing multiple-choice answers was made available. The consultation sought views on whether the Council should use available adoptive provisions to extend the current sex establishment licensing regime to also include sex entertainment venues and, subject to this, on the content of a supportive draft revised sex establishment licensing policy.
- 2.2 The public consultation comprised of:
 - Direct notifications sent to:
 - Interested partner services;
 - Local licence holders and trade representative groups;
 - Representatives of local resident and known local interest groups;
 - Ward councillors; and
 - Neighbouring licensing authorities.
 - An online questionnaire made available through the resident's engagement forum, together with a copy of the policy and supporting information; and
 - Awareness raising through use of: Social media; and
 - An article in the Council's e-newsletter.

- 2.3 Some 136 responses were received in total. Respondents were asked to select from multiple choice answers to the questions asked. Many respondents provided further additional comments.
- 2.4 The consultation response provided strong support for a local licensing scheme for sex entertainment venues:
- 91.9% of respondents supported the proposal;
 - 92.6% of respondents believe that the Council should be able to determine the matters to be taken into account when determining licence applications;
 - 91.9% of respondents believe the Council should be able to determine the locations that are suitable for a licence to be granted;
 - 95.5% of respondents believe that the Council should be able to determine the terms, conditions and restrictions under which any licensed premises might operate;
 - 75% of respondents did not agree that applications should be considered upon their own merits;
 - 80.5% of respondents believe that no area of the borough is suitable for a licensed sex entertainment venue to operate; and
 - 72.1% of respondents support a licensing establishing 'nil' as the appropriate number for local licensed sex establishments (a 'nil' policy).
- 2.5 When questioned about whether any area of the borough is suitable for a sex entertainment venue, 19 respondents provided views. These offered a number of different locations without any degree of strong support being demonstrated for any particular location.
- 2.6 Views were also sought on the draft revised Sex Establishments Licensing Policy and licence conditions:
- 91% of respondents considered the policy and conditions to be clear and easy to understand;
 - 73% of respondents considered the policy and conditions to be fair and reasonable;
 - 76% of respondents considered the policy and conditions to be proportionate;
 - 77% of respondents supported the proposed approach to determining licence applications;
 - 73% of respondents believe that the policy and conditions give appropriate consideration to equality issues; and
 - 43.1% of respondents consider the standard conditions to be appropriate.
- 2.7 Respondents were asked what they considered to be the most important issues to be taken into account when deciding whether a sex establishment licence should be granted. In total 103 respondents offered their views. Around 100 different issues were raised in response:
- Most common issue raised was that of location. Particular concern was shown around the proximity of venues to residential accommodation and schools;
 - Other matters commonly raised were:
 - Impact on local residents;
 - Impact on image of the borough / local area;

- Crime and anti-social behaviour;
- Security and safety;
- Exploitation of workers;
- Operating hours;
- Noise nuisance; and
- Parking.
- Around 20% of those who commented emphasised that they do not believe any licences should be granted.

2.8 A further 49 additional comments were given at the end of the questionnaire. Again, many different matters were raised. Most commonly (circa 40%) respondents emphasised their opposition to the grant of any licences.

5. Timetable for progression

5.1 Any decision to adopt the provisions of Section 27 of the Policing and Crime Act 2009 must be taken by the Assembly.

5.2 Following review of consultation responses and any necessary update of the draft policy, a final decision on adoption may be taken in October 2019 with a view to having the licensing process up and operable for the next financial year.

6. Legal Implications

Implications completed by Dr Paul Feild, Senior Corporate Governance Lawyer

- 6.1 As outlined in the body of this report, the 2009 Act inserted a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the Local Government (Miscellaneous Provisions) 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas
- 6.2 The report explained the need for the Council to prepare for such applications as may be made by having a Policy. By having a comprehensive policy which has been open to proper consultation the Council as a licensing authority is enabled to set clear operating criteria in terms of what will be permissible and what will not with emphasis against such establishments being within the vicinity of other identified premises such as for example, but not limited to schools and other facilities used primarily by children and young persons, furthermore it will enable standard conditions to be understood by all.
- 6.3 As mentioned in the body of this report as a licensing body and local authority the Council is subject to the Public Sector Equality duty and this must inform the policy and licensing of the activities. Furthermore, such arrangements must be open to review for effectiveness over time.
- 6.4 After the Consultation response has been considered, the final policy will need to be approved by the Assembly

7. Financial Implications

Implications completed by Katherine Heffernan, Finance Group Manager

- 7.1 This report seeks approval to regulate licensing decisions and ensures an adopted policy will ensure consistency in licensing practices and processes.
- 7.2 There are no direct financial implications arising from the implementation of this draft policy.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix A – Summary of consultation responses
- Appendix B - Draft Sex Establishment Policy
- Appendix C – Standard Licence terms, conditions and restrictions